



May 14, 1999

Mr. Don Ballard
Assistant Attorney General
Open Records Coordinator
Office of the Attorney General
P.O. Box 12548
Austin, Texas 78711-2548

OR99-1338

Dear Mr. Ballard:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 124117.

The Medicaid Fraud Control Unit of the Office of the Attorney General ("MFCU") received a request for information related to investigations of a particular nursing home during 1996 and 1997. You submit representative samples of the requested information.¹ You seek to withhold the requested information under sections 552.101 and 552.108 of the Government Code.

Section 552.101 requires withholding, *inter alia*, information made confidential by statute. You advise that the complaints and much of the documentation responsive to the request were referred by or obtained from the Department of Human Services and contend that these records are made confidential by section 242.127 of the Health and Safety Code. That section provides that "[a] report, record, or other working paper used or developed in an investigation under [subchapter E, chapter 242 of the code] and the name of any person making a report under [subchapter E, chapter 242 of the code is] confidential and may be disclosed only for purposes consistent with the rules adopted by the [Texas Board of Human Services] or the designated agency." *See also id* § 242.126 (investigation of complaint of abuse or neglect by Department of Human Services or designated agency). This office has determined in prior decisions that the confidentiality provision in section 242.127 extends

¹In reaching our conclusion, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision No. 499 (1988), 497 (1988) (where requested documents are numerous and repetitive, governmental body should submit representative sample; but if each record contains substantially different information, all must be submitted). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

to MFCU's reports, records, or working papers used or developed in an investigation under subchapter E. *See, e.g.*, Open Records Letter No. 95-1415 (1995). We have examined the submitted information for which you claim the protection of section 242.127 and conclude that it is subject to that provision. Since you have not advised of any rules permitting disclosure of the information at issue, we conclude that it is confidential under section 242.127 and must be withheld in its entirety.

You claim that a portion of the information is made confidential by the Texas Medical Practice Act, V.T.C.S. article 4495b, which provides:

Records of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician are confidential and privileged and may not be disclosed except as provided in this section.

V.T.C.S. art. 4495b, § 5.08(b). We agree that the submitted information for which you claim the protection of article 4495b must be withheld under that provision.²

Section 552.108 of the Government Code excepts from required public disclosure, *inter alia*:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if:

...

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution . . . if:

...

²For the material for which you claim article 4495b protection, you also claim the protection of sections 12.003 and 21.012 of the Human Resources Code, as well as related federal regulations, which make confidential information identifying Medicaid recipients. Since we have permitted you to withhold this information under article 4495b, we need not address your claims under these other provisions.

(2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication[.]

You claim that portions of the requested information constitute investigatory or internal records pertaining to closed cases. We have examined the material for which you claim the protection of section 552.108 and conclude that you may generally withhold such material under section 552.108.

Section 552.108 does not, however, except from required public disclosure "basic information about an arrested person, an arrest, or a crime." Gov't Code § 552.108(c). Because you have raised no other exception to disclosure, MFCU must release these types of information in accordance with *Houston Chronicle Publishing Company v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976).³

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,



William Walker
Assistant Attorney General
Open Records Division

WMW/eaf

Ref.: ID# 124117

encl. Submitted documents

³You claim that portions of the records for which you claim the protection of section 552.108 also constitute confidential criminal history information. *See* Gov't Code ch. 411. Criminal history information is not "basic information" such as to fall outside the protection of section 552.108. Since we have permitted you to withhold this information under section 552.108, we need not address your other claim as to the confidentiality of the criminal history information.

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cc: Ms. Fran Matlock Beard
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(w/o enclosures)